

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators
Australian Postal Corporation–United States Postal Service
Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2012-2

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE CONCERNING RATE ADJUSTMENT
FOR BIALTERAL AGREEMENT WITH AUSTRALIA POST AND
FUNCTIONALLY EQUIVALENT NEGOTIATED SERVICE AGREEMENT

(October 27, 2011)

The Public Representative hereby provides comments pursuant to Order No. 913.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's Notice of a Type 2 rate adjustment for inbound letter post entered with the Postal Service pursuant to an additional Inbound Market Dominant Multi-Service Agreement.² The Notice concerns a bilateral agreement with the Australian Postal Corporation (Australia Post), which would set negotiated rates for various inbound letter post items, including a service for delivery confirmation scanning of inbound letter post small packets. Notice at 3.

In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product, and included the Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Post PakketSERVICE Benelux BV (TNT Agreement) and the China

¹ PRC Order No. 913, Notice and Order Concerning Rate Adjustment for Bilateral Agreement with Australian Postal Corporation and Functionally Equivalent Negotiated Service Agreement, October 20, 2011.

² Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, October 14, 2011 (herein "Notice").

Post Group—United States Postal Service Letter Post Bilateral Agreement (China Post 2010 Agreement) within the product.³ Subsequently, the Commission determined that bilateral agreements with HongKong Post (HongKong Post Agreement) and China Post Group (China Post 2011 Agreement) should be included within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product.⁴

The Postal Service asserts that the Australia Post Agreement is similar, and therefore functionally equivalent, to the China Post 2010 Agreement.⁵ Consequently, the Postal Service proposes to include the Australia Post Agreement within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 (MC2010-35, R2010-5 and R2010-6) product. *Id.* at 8. The Postal Service also asserts that the negotiated rates in the Australia Post Agreement result in “improvement over default rates established under the Universal Postal Union (UPU) Acts for inbound letter-post items.” *Id.* at 1. The negotiated rates are intended to become effective on January 1, 2012. *Id.* at 2.

COMMENTS

The Public Representative has reviewed the Australia Post Agreement and the supporting financial model filed under seal that accompanied the Postal Service’s Notice. Based upon that review, the Public Representative concludes that the Australia Post Agreement is likely to improve the net financial position of the Postal Service or otherwise enhance the operational performance of the Postal Service during the contract period. In addition, the Public Representative concludes that the Australia Post Agreement is functionally equivalent to the China Post 2010 Agreement.

³ See PRC Order No. 549, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreement, Docket Nos. MC2010-35, R2010-5 and R2010-6, September 30, 2010.

⁴ See PRC Order No. 700, Order Approving Rate Adjustment for HongKong Post—United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, Docket No. R2011-4, March 18, 2011; see also Order No. 871, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. R2011-7, September 23, 2011.

⁵ Notice at 8. The Postal Service notes that in Order No. 549, the Commission did not indicate whether the China Post 2010 Agreement or the TNT Agreement “would serve as the ‘baseline’ agreement for functional equivalence comparisons with future agreements.” *Id.*, at 9 n.8. The Postal Service states in its Notice that it considers comparison of the Australia Post Agreement with the China Post 2010 Agreement to be “illuminating and appropriate.” *Id.*

Functional Equivalence. In its Notice, the Postal Service identifies one difference between the Australia Post Agreement and the China Post 2010 Agreement “that could affect the similarity of the cost characteristics . . . of the agreement.” *Id.* at 9. Under the Australia Post Agreement, the initial term of the agreement is for two years, while the initial term of the China Post 2010 Agreement is one year. *Id.* The Postal Service observes that the Commission has not previously found differences in the time an agreement remains effective to be dispositive with respect to whether such an agreement is functionally equivalent or not. *Id.* at 9. In general, the Public Representative agrees that the term of an agreement should not affect the determination of functional equivalence given that the underlying cost characteristics of the agreement are not changed compared to the agreement(s) used for comparison. That said, the duration of an agreement affects the estimate of the financial performance of an agreement as cost and revenue estimates for periods in the more distant future are less certain.

Financial Improvement. Under 39 U.S.C. § 3622(c)(10), the criteria for the Commission’s review are whether the agreement (1) improves the net financial position of the Postal Service or enhances the performance of operational functions, (2) will not cause unreasonable harm to the marketplace, and (3) will be available on public and reasonable terms to similarly situated mailers. With respect to criterion (1), the negotiated rates for inbound letter post items should result in improvement compared to the Provisional Quality of Service Linked terminal dues rates established by the UPU for CY2012.⁶ Based upon the negotiated rates, the financial model indicates that the Australia Post Agreement will improve the financial position of the Postal Service during the term of the agreement. The Australia Post Agreement should also make some improvement in the operational performance of the Postal Service. Notice at 4. With respect to criteria (2) and (3), the Postal Service makes reasonable arguments that they are not implicated by the inbound Australia Post Agreement. Notice at 4-5.

⁶ See UPU International Bureau Circular 124, 27 June 2011. It should be noted that in the Excel file (Non-Public) AUS_MD_IB_2011.10.12.xls, worksheet tab 10_Current_TDues_Rates, the headings for Columns [D] and [E] refer to “FY2011.” It appears the columns should be headed “CY2011.” In addition, the rates displayed in the columns, while similar, are not the Provisional quality of service linked terminal dues rates for CY2011 applicable to inbound letter post entered by Australia Post. See Universal Postal Union, International Bureau Circular 142, 5 July 2010, Table 1.1.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

James F. Callow
Public Representative

901 New York Ave. NW
Washington, DC 20268-0001
202-789-6839
callowjf@prc.gov